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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/736,413	<b>Applicant(s)</b> FATULA, JOSEPH JOHN	
	<b>Examiner</b> LIN LIU	<b>Art Unit</b> 2145	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 and 30-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25, and 30-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This office action is responsive to communications filed on 12/13/2007.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-25 and 30-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Beeler, JR. (publication no.: US 2004/0083245 A1)** in view of **Schutzman et al. (Patent no.: US 6,505,216 B1)** and **Goddard (patent no.: US 6,883,110 B1)**.

With respect to **claim 1**, Beeler teaches a sequence management apparatus for backing up data across a plurality of servers (Beeler, fig. 5), the apparatus comprising:

a client request module configured to receive data to be backed up from a source server (Beeler, page 5, paragraphs 78-79, noted that the workstation 30 initiates the backup request from a source server to target servers);

a sequence module configured to generate a non-transparent sequence of a plurality of target servers (Beeler, page 6, paragraph 84, noted that the a list of available target servers are generated), wherein the non-transparent sequence is unique and

exclusively accessible to a global sequence manager (Beeler: page 6, paragraph 84-85, noted the list of available target servers); and

a packet storage module configured to store the data on the plurality of target servers according to the non-transparent sequence (Beeler, page 6, paragraph 91, and page 9, paragraph 121, noted that the data is backed up from the source server to target servers).

However, Beeler does not explicitly teach a method of performing data backup from a source client to a plurality of target servers.

In the same field of endeavor, Schutzman teaches a method of performing data backup from a source client to a plurality of the target servers. (Schutzman, fig. 2, and col. 13, lines 29-55, noted that the host client backs up data to the backup server and the data is being stored in the backup storage servers 114).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the backup host client as taught by Schutzman in Beeler's invention to perform data backup from a client device to a plurality of target storage servers via a source server.

However, the combined method of Beeler and Schutzman does not explicitly teach a method of performing data backup to plurality of the client computers

In the same field of endeavor, Goddard teaches a method of performing data backup to plurality of the client computers (Goddard, figures 1 and 2, col. 4 lines 1-17).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to substitute the plurality of target clients as taught by Goddard

in the combined method of Beeler's and Schutzman's invention in order to back up data to the plurality of client computers without adding additional storage devices to the source client/source (Goddard, col. 2, lines 7-15).

With respect to **claim 2**, Beeler teaches the apparatus of claim 1, further comprising a global profile management module configured to manage a metadata file, the metadata file descriptive of the data backed up on the plurality of target clients (Beeler, fig. 17, page 8, paragraph 105, noted the transaction log).

With respect to **claim 3**, Beeler teaches the apparatus of claim 2, wherein the metadata file is selected from the group consisting of a global client profile, a source client profile, a source data record, a target data record, a data assembly record, and a global backup log (Beeler, fig. 17, page 8, paragraph 105, noted the transaction log).

With respect to **claim 4**, the combined method of Beeler and Schutzman teaches all the claimed limitations, except that they do not explicitly teach a method of using a unique data identifier corresponding to the data to map the data to the source client, the unique data identifier indicating a uniqueness of the data as compared to other data.

In the same field of endeavor, Goddard teaches a method of using a unique data identifier corresponding to the data to map the data to the source client (Goddard, fig. 2, col. 4 line 59 to col. 5 line 13, noted the server data identifiers).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the method of server data identifiers as taught by Goddard in the combined method of Beeler's and Schutzman's invention in order to

backup and restore data based on the server data identifiers (Goddard, col. 5, lines 5-13).

With respect to **claim 5**, the combined method of Beeler and Schutzman teaches all the claimed limitations, except that they do not explicitly teach a method of mapping the unique data identifier to a second source client on which an identical copy of the data is stored.

In the same field of endeavor, Goddard teaches a method of mapping the unique data identifier to a second source client on which an identical copy of the data is stored. (Goddard, fig. 2, col. 4 line 59 to col. 5 line 13).

With respect to **claim 6**, Beeler teaches the apparatus of claim 1, further comprising a packet retrieval module configured to retrieve at least a portion of the data backed up on one of the plurality of the target clients in response to a restore request from the source client (Beeler, page 6, paragraph 92, restore request).

With respect to **claim 7**, Beeler teaches the apparatus of claim 6, wherein the packet retrieval module is further configured to retrieve the at least a portion of the data backed up on one of the plurality of the target clients according to the non-transparent sequence generated by the sequence module (Beeler, page 6 paragraph 92, and page 10 paragraph 131).

With respect to **claim 8**, the combined method of Beeler and Schutzman teaches all the claimed limitations, except that they do not explicitly teach a method of assembling the data in a comprehensible format in response to a restore request from the source client.

In the same field of endeavor, Goddard teaches a method of assembling the data in a comprehensible format in response to a restore request from the source client (Goddard, fig. 5, col. 6, lines 12-27, noted that different portions of data is reconstructed and restored).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the method of reconstructing and restoring different portions of data from the target clients as taught by Goddard in the combined method of Beeler's and Schutzman's invention in order to back up data due to server failure (Goddard, col. 6, lines 41-52).

With respect to **claim 9**, Beeler teaches the apparatus of claim 1, wherein the packet storage module is further configured to separate the data into a plurality of data packets and to store the data packets on the plurality of target clients (Beeler, page 9, paragraph 113).

With respect to **claim 10**, Beeler teaches the apparatus of claim 9, further comprising a compression module configured to compress the data within the data packets prior to storing the data packets on the plurality of target clients (Beeler, page 9, paragraph 123, noted the compression algorithm used).

With respect to **claim 11**, Beeler teaches the apparatus of claim 9, further comprising an encryption module configured to encrypt the data within the data packets prior to storing the data packets on the plurality of target clients (Beeler, page 9, paragraph 123, noted the encryption algorithm).

With respect to **claim 12**, the combined method of Beeler and Schutzman teaches all the claimed limitations, except that they do not explicitly teach a method of creating a redundant data packet of at least one of the data packets prior to storing the data packets on the plurality of target clients.

In the same field of endeavor, Goddard teaches a method of creating a redundant data packet of at least one of the data packets prior to storing the data packets on the plurality of target clients (Goddard, col. 6, lines 41-52, noted the parity data).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the method of creating a parity data packet as taught by Goddard in the combined of Beeler and Schutzman in order to maintain data server integrity during data reconstruction (Goddard, col. 6, lines 41-52).

With respect to **claim 13**, the combined method of Beeler and Schutzman teaches all the claimed limitations, except that they do not explicitly teach a method of storing the redundant data packet on one of the plurality of target clients.

In the same field of endeavor, Goddard teaches a method of storing the redundant data packet on one of the plurality of target clients (Goddard, fig. 6 and col. 6, lines 28-40).

With respect to **claim 14**, Beeler teaches the apparatus of claim 9, wherein the packet storage module stores the data packets on the plurality of target clients according to a packet proximity parameter, the packet proximity parameter defining at

least one of a minimum and a maximum distance between a first target client and a second target client (Beeler, page 6, paragraph 84).

With respect to **claim 15**, The apparatus of claim 1, wherein the packet storage module stores the data on the plurality of target clients according to a backup proximity parameter, the backup proximity parameter defining at least one of a minimum and a maximum distance between the source client and each of the plurality of target client (Beeler, page 6, paragraph 85, noted the a location is specified).

With respect to **claim 16**, Beeler teaches a client for backing up data across a plurality of servers in conjunction with a sequence management apparatus, the server comprising:

a network interface configured to communicate with the sequence management apparatus (Beeler, page 6, paragraphs 84-85);

a storage configured to define an allocated storage (Beeler, fig. 5, page 10, paragraph 125); and

a client backup manager apparatus configured to manage a backup operation across a grid computing system (Beeler: page 1, paragraphs 2 & 8, noted the real time backup system) using a non-transparent sequence (Beeler, page 6, paragraph 84, noted that the a list of available target servers are generated), wherein the non-transparent sequence is unique and exclusively accessible to a global sequence manager (Beeler: page 6, paragraph 84-85, noted the list of available target servers).

However, Beeler does not explicitly teach a method of using a unique data identifier.

In the same field of endeavor, Goddard teaches a method of using a unique data identifier corresponding to the data to map the data to the source client (Goddard, fig. 2, col. 4 line 59 to col. 5 line 13, noted the server data identifiers).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the method of server data identifiers as taught by Goddard in the combined method of Beeler's and Schutzman's invention in order to backup and restore data based on the server data identifiers (Goddard, col. 5, lines 5-13).

However, Beeler does not explicitly teach a method of performing data backup from a source client to a plurality of target servers.

In the same field of endeavor, Schutzman teaches a method of performing data backup from a source client to a plurality of the target servers. (Schutzman, fig. 2, and col. 13, lines 29-55, noted that the host client backs up data to the backup server and the data is being stored in the backup storage servers 114).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the backup host client as taught by Schutzman in Beeler's invention to perform data backup from a client device to a plurality of target storage servers via a source server.

However, the combined method of Beeler and Schutzman does not explicitly teach a method of performing data backup to plurality of the client computers

In the same field of endeavor, Goddard teaches a method of performing data backup to plurality of the client computers (Goddard, figures 1 and 2, col. 4 lines 1-17).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to substitute the plurality of target clients as taught by Goddard in the combined method of Beeler's and Schutzman's invention in order to back up data to the plurality of client computers without adding additional storage devices to the source client/source (Goddard, col. 2, lines 7-15).

With respect to **claim 17**, Beeler teaches all the limitations, except that he does not explicitly teach a method of performing data backup from a source client to a plurality of target servers.

In the same field of endeavor, Schutzman teaches a method of performing data backup from a source client to a plurality of the target servers. (Schutzman, fig. 2, and col. 13, lines 29-55, noted that the host client backs up data to the backup server and the data is being stored in the backup storage servers 114).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the backup host client as taught by Schutzman in Beeler's invention to perform data backup from a client device to a plurality of target storage servers via a source server.

With respect to **claim 18**, Beeler teaches all the limitations, except that he does not explicitly teach a method of performing data backup to plurality of the client computers.

In the same field of endeavor, Goddard teaches a method of performing data backup to plurality of the client computers (Goddard, figures 1 and 2, col. 4 lines 1-17).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to substitute the plurality of target clients as taught by Goddard in the combined method of Beeler's and Schutzman's invention in order to back up data to the plurality of client computers without adding additional storage devices to the source client/source (Goddard, col. 2, lines 7-15).

With respect to **claim 19**, Beeler a system for backing up data across a plurality of servers, the system comprising:

- a network communications channel (Beeler, fig. 5, page 5, paragraph 75, LAN);
- a source server connected to the network communications channel and configured to initiate a data backup operation (Beeler, fig. 5, page 5, paragraph 75, noted the source server 52);

- a plurality of target servers connected to the network communications channel and configured to store at least a portion of the data (Beeler, fig. 5, page 5, paragraph 79, noted the target servers 54); and

- a global sequence manager connected to the network communications channel and configured to store the data on the plurality of target servers according to a non-transparent sequence (Beeler, fig. 11, page 6, paragraphs 84-85), wherein the non-transparent sequence is unique and exclusively accessible to a global sequence manager (Beeler: page 6, paragraph 84-85, noted the list of available target servers).

However, Beeler does not explicitly teach a method of performing data backup from a source client to a plurality of target servers.

In the same field of endeavor, Schutzman teaches a method of performing data backup from a source client to a plurality of the target servers. (Schutzman, fig. 2, and col. 13, lines 29-55, noted that the host client backs up data to the backup server and the data is being stored in the backup storage servers 114).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the backup host client as taught by Schutzman in Beeler's invention to perform data backup from a client device to a plurality of target storage servers via a source server.

However, the combined method of Beeler and Schutzman does not explicitly teach a method of performing data backup to plurality of the client computers

In the same field of endeavor, Goddard teaches a method of performing data backup to plurality of the client computers (Goddard, figures 1 and 2, col. 4 lines 1-17).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to substitute the plurality of target clients as taught by Goddard in the combined method of Beeler's and Schutzman's invention in order to back up data to the plurality of client computers without adding additional storage devices to the source client/source (Goddard, col. 2, lines 7-15).

**Claim 20** lists all the same elements of **claims 4 and 5**. Therefore, the supporting rationale of the rejection to **claims 4 and 5** applies equally as well to **claim 20**.

With respect to **claim 21**, Beeler teaches the system of claim 19, further comprising a subscription manager configured to manage a contractual subscription of

each of the source client and the plurality of target clients (Beeler, fig. 11, page 6, paragraph 88).

With respect to **claim 22**, Beeler teaches the system of claim 21, wherein the global sequence manager and subscription manager are further configured to track a source storage allocation parameter of the source client (Beeler, page 7, paragraph 95).

With respect to **claim 23**, Beeler teaches the system of claim 21, wherein the global sequence manager and subscription manager are further configured to track a target storage allocation parameter of each of the plurality of target clients (Beeler, page 6, paragraph 94).

With respect to **claim 24**, Beeler teaches the system of claim 21, wherein the global sequence manager and subscription manager are configured to track a resource allocation parameter (Beeler, pages 6-7, paragraphs 94-95).

With respect to **claim 25**, Beeler teaches the system of claim 24, wherein the resource allocation parameter is selected from the group consisting of a network allocation parameter, a client processor parameter, and a client bandwidth parameter (Beeler, pages 6-7, paragraphs 94-95).

In regard to **claim 30**, the limitations of these claims are substantially the same as those in claim 1. Therefore the same rationale for rejecting claim 1 is used to reject claim 30. By this rationale **claim 30** is rejected.

In regard to **claim 31**, the limitations of these claims are substantially the same as those in claims 2 and 3. Therefore the same rationale for rejecting claims 2 and 3 is used to reject claim 31. By this rationale **claim 31** is rejected.

In regard to **claim 32**, the limitations of these claims are substantially the same as those in claim 9. Therefore the same rationale for rejecting claim 9 is used to reject claim 32. By this rationale **claim 32** is rejected.

In regard to **claim 33**, the limitations of these claims are substantially the same as those in claim 4. Therefore the same rationale for rejecting claim 4 is used to reject claim 33. By this rationale **claim 33** is rejected.

In regard to **claim 34**, the limitations of these claims are substantially the same as those in claim 21. Therefore the same rationale for rejecting claim 21 is used to reject claim 34. By this rationale **claim 34** is rejected.

In regard to **claim 35**, the limitations of these claims are substantially the same as those in claims 24 and 25. Therefore the same rationale for rejecting claims 24 and 25 is used to reject claim 25. By this rationale **claim 25** is rejected.

With respect to **claim 36**, Beeler teaches a method for backing up data across a plurality of servers, the method comprising:

requesting data to be backed up from a source client (Beeler, fig. 5, page 6, paragraph 91);

receiving data to be backed up from a source server (Beeler, page 5, paragraphs 78-79, noted that the workstation 30 initiates the backup request from a source server to target servers);

separating the data into a plurality of data packets (Beeler, page 9, paragraph 113);

generating a non-transparent sequence of a plurality of target servers (Beeler, page 6, paragraph 91, and page 9, paragraph 121, noted that the data is backed up from the source server to target servers), wherein the non-transparent sequence is unique and exclusively accessible to a global sequence manager (Beeler: page 6, paragraph 84-85, noted the list of available target servers);

storing the data packets on the plurality of target servers according to the non-transparent sequence (Beeler, page 6, paragraph 91, and page 9, paragraph 121, noted that the data is backed up from the source server to target servers).

managing a metadata file descriptive of the data backed up on the plurality of target servers (Beeler, fig. 17, page 8, paragraph 105, noted the transaction log);

tracking a resource allocation parameter, wherein the resource allocation parameter is one of a source storage allocation parameter, a target storage allocation parameter, a network allocation parameter, a client processor parameter, and a client bandwidth parameter (Beeler, pages 6-7, paragraphs 94-95); and

managing a contractual subscription of the source server and the plurality of target servers (Beeler, fig. 11, page 6, paragraph 88).

However, Beeler does not explicitly teach a method of performing data backup from a source client to a plurality of target servers.

In the same field of endeavor, Schutzman teaches a method of performing data backup from a source client to a plurality of the target servers. (Schutzman, fig. 2, and col. 13, lines 29-55, noted that the host client backs up data to the backup server and the data is being stored in the backup storage servers 114).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the backup host client as taught by Schutzman in Beeler's invention to perform data backup from a client device to a plurality of target storage servers via a source server.

However, the combined method of Beeler and Schutzman does not explicitly teach a method of performing data backup to plurality of the client computers

In the same field of endeavor, Goddard teaches a method of performing data backup to plurality of the client computers (Goddard, figures 1 and 2, col. 4 lines 1-17).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to substitute the plurality of target clients as taught by Goddard in the combined method of Beeler's and Schutzman's invention in order to back up data to the plurality of client computers without adding additional storage devices to the source client/source (Goddard, col. 2, lines 7-15).

The combined method of Beeler and Schutzman teaches all the claimed limitations, except that they do not explicitly teach a method of using a unique data identifier corresponding to the data to map the data to the source client.

In the same field of endeavor, Goddard teaches a method of using a unique data identifier corresponding to the data to map the data to the source client (Goddard, fig. 2, col. 4 line 59 to col. 5 line 13, noted the server data identifiers).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the method of server data identifiers as taught by Goddard in the combined method of Beeler's and Schutzman's invention in order to

backup and restore data based on the server data identifiers (Goddard, col. 5, lines 5-13).

In regard to **claim 37**, the limitations of these claims are substantially the same as those in claim 1, but rather in a computer code stored in a computer storage medium form. Therefore the same rationale for rejecting claim 1 is used to reject claim 37. By this rationale **claim 37** is rejected.

In regard to **claim 38**, the limitations of these claims are substantially the same as those in claims 2 and 3. Therefore the same rationale for rejecting claims 2 and 3 is used to reject claim 38. By this rationale **claim 38** is rejected.

In regard to **claim 39**, the limitations of these claims are substantially the same as those in claim 4. Therefore the same rationale for rejecting claim 4 is used to reject claim 39. By this rationale **claim 39** is rejected.

In regard to **claim 40**, the limitations of these claims are substantially the same as those in claim 7. Therefore the same rationale for rejecting claim 7 is used to reject claim 40. By this rationale **claim 40** is rejected.

In regard to **claim 41**, the limitations of these claims are substantially the same as those in claim 8. Therefore the same rationale for rejecting claim 8 is used to reject claim 41. By this rationale **claim 41** is rejected.

In regard to **claim 42**, the limitations of these claims are substantially the same as those in claim 9. Therefore the same rationale for rejecting claim 9 is used to reject claim 42. By this rationale **claim 42** is rejected.

In regard to **claim 43**, the limitations of these claims are substantially the same as those in claim 14. Therefore the same rationale for rejecting claim 14 is used to reject claim 43. By this rationale **claim 43** is rejected.

In regard to **claim 44**, the limitations of these claims are substantially the same as those in claims 10-13. Therefore the same rationale for rejecting claims 10-13 is used to reject claim 44. By this rationale **claim 44** is rejected.

In regard to **claim 45**, the limitations of these claims are substantially the same as those in claim 15. Therefore the same rationale for rejecting claim 15 is used to reject claim 45. By this rationale **claim 45** is rejected.

In regard to **claim 46**, the limitations of these claims are substantially the same as those in claim 1. Therefore the same rationale for rejecting claim 1 is used to reject claim 46. By this rationale **claim 46** is rejected.

### ***Response to Arguments***

4. Applicant's arguments filed on 12/13/2007 have been fully considered but they are not persuasive.

5. After carefully reviewing the Applicant's remarks, the following is a list of Applicant's main concerns on the previous Office Action:

- a. On pages 12-13 of Applicant's remark, Applicant argues that Beeler fails to teach or suggest a client request module configured to receive data to be backed up from a source client.

- b. On page 13 of Applicant's remark, Applicant argues that Beeler fails to teach or suggest generation of a list of available target servers in a uniquely ordered sequence, and the list of available target servers of Beeler is different from the non-transparent sequence.
  - c. On page 13 of Applicant's remark, Applicant argues that Beeler fails to teach or suggest a packet storage module configured to store the data on the plurality of target servers according to the non-transparent sequence.
  - d. On page 14 of Applicant's remark, Applicant argues that Beeler fails to teach or suggest a network interface configured to communicate with the sequence management apparatus, and sending a broadcast message over a network to determine whether a node is a source server is different from a network interface configured to communicate with the sequence management apparatus.
  - e. On page 15 of Applicant's remark, Applicant argues that Beeler fails to teach or suggest a client backup manager apparatus to manage a backup operation across a grid computing system.
6. With regard to argument **a**, Applicant argues that "Beeler appears to be silent with regard to backing up data from a source client". Examiner agrees. That's the reason why the examiner brought in the secondary references (Schutzman et al. and Goddard) to remedy such limitation and reject these claims under 35 U.S.C 103 (a). Beeler teaches initiating a backup request from a source server to target servers

(Beeler, page 5, paragraphs 78-79). However, Beeler does not explicitly teach a method of performing data backup from a source client to a plurality of target servers. In the same field of endeavor, Schutzman teaches a method of performing data backup from a source client to a plurality of the target servers. (Schutzman, fig. 2, and col. 13, lines 29-55, appropriated motivation to combine these references can be found from the actual rejection above). However, the combined method of Beeler and Schutzman does not explicitly teach a method of performing data backup to plurality of the client computers. In the same field of endeavor, Goddard teaches a method of performing data backup to plurality of the client computers (Goddard, figures 1 and 2, col. 4 lines 1-17, appropriated motivation to combine these references can be found from the actual rejection above).

7. With regard to argument **b**, it appears that Applicant has a specific definition for “uniquely ordered sequence”, which has not been included in the claims are presented. Therefore, the claims are interpreted by the examiner as broadly as possible in light of the specification. In the instant case, the term “uniquely ordered sequence” is given a general reasonable meaning for any sequence order , which is explicitly taught by Beeler, page 6, paragraph 84, noted that that the source server replicates data files from a source server to a target server according to a list of available target servers.

8. With regard to argument **c**, the examiner disagrees. The teaching of such limitation can be found in Beeler, page 6, paragraph 91, and page 9, paragraph 121 (noted that the data is backed up from the source server to target servers). Also, as explained above in the response to argument a, that these claims are rejected under 35

U.S.C 103 (a) with two secondary references (Schutzman et al. and Goddard) to remedy the limitations not taught by Beeler.

9. With regard to argument **d**, the examiner disagrees. For two server nodes to communicate with each other, or a server node coupled to receive a request via a network, there must have some type of network interface configured to do such network communication. This is the fundamental of network communication. Similarly, in the instant case of Beeler, all communication between the user Workstations, source server and target servers are all done via LAN (Beeler: page 5, paragraph 77, and page 6, paragraphs 84-85), this inherently implies that there's a network interface configured to do some communication.

10. With regard to argument **e**, the examiner disagrees. Beeler does teach client backup manager apparatus to manage a backup operation across a grid computing system (Beeler: page 1, paragraphs 2 & 8, noted the real time backup system.).

11. Furthermore, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

12. Applicant has had an opportunity to amend the claimed subject matter, and has failed to modify the claim language to distinguish over the prior art of record by clarifying or substantially narrowing the claim language. Thus, Applicant apparently intends that a broad interpretation be given to the claims and the Examiner has adopted such in the

present and previous Office action rejections. See *In re Prater and Wei*, 162 USPQ 541 (CCPA 1969), and MPEP 2111.

13. Applicant employs broad language, which includes the use of word, and phrases, which have broad meanings in the art. In addition, Applicant has not argued any narrower interpretation of the claim language, nor amended the claims significantly enough to construe a narrower meaning to the limitations. As the claims breadth allows multiple interpretations and meanings, which are broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly and as reasonably possible, in determining patentability of the disclosed invention. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993). Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response, and reiterates the need for the Applicant to more clearly and distinctly defines the claimed invention.

### ***Conclusion***

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lin Liu whose telephone number is (571) 270-1447.

The examiner can normally be reached on Monday - Friday, 7:30am - 5:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/L. L./  
/Lin Liu/

Examiner, Art Unit 2145

/Jason D Cardone/  
Supervisory Patent Examiner, Art Unit 2145